

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

In re:	)	
	)	
MILLENNIUM MULTIPLE EMPLOYER	)	Case No. 10-13528
WELFARE BENEFIT PLAN,	)	(Chapter 11)
	)	
Debtor.	)	
<hr/>	)	
	)	Adversary. No.
CLAUDE YOUNG, et al	)	10-01176
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	
THE MILLENNIUM MULTIPLE	)	
EMPLOYER WELFARE BENEFIT PLAN,	)	
<i>et al,</i>	)	
	)	
<i>Defendants.</i>	)	

The Millennium Multiple Employer Welfare Benefit Plan ("Millennium") files this short response to Defendant Timothy O'Rourke's Motion for Summary Judgment and Supply Brief.

1. Millennium believes it is important for the Court to reaffirm its prior holding that the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") apply to Millennium because adopting employers which chose to provide welfare benefits to employees established plans subject to ERISA. *See MEWAs – Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation* (United States Department of Labor, Employee Benefits Security Administration, Revised Sept. 2004) (available at [www.dol.gov/ebsa/publications/MEWAs](http://www.dol.gov/ebsa/publications/MEWAs)) p. 9 ("In effect, the arrangement sponsored by the group or association would, under such circumstances, be viewed

merely as a vehicle for funding the provision of benefits (like an insurance company) to a number of individual ERISA-covered plans..."); DOL Advisory Op. 2007-05A, n. 1 (Aug. 15, 2007) (available at [www.dol.gov/ebsa/regs/AOs](http://www.dol.gov/ebsa/regs/AOs)) (even if the MEWA itself is not an ERISA-covered plan, "[i]n such cases, the Department would view each employer using the MEWA to provide welfare benefits to its employees as having established a separate welfare benefit plan subject to ERISA.").

2. The recently confirmed Plan of Liquidation is based on the provisions of ERISA in many respects. Most importantly, the Plan of Liquidation assumes that Millennium is a welfare benefit plan whose assets are held for the exclusive benefit of the participants. This is consistent with the "exclusive benefit" provisions of Section 404 of ERISA, 29 U.S.C. 1104. In addition, the disposition of those assets in the Plan of Liquidation is based on the documents governing Millennium as required by ERISA Section 404(a)(1)(d), 29 U.S.C. 1104(a)(1)(d).

3. Even without the "law of the case" effect of this Court's prior rulings (*see Prairie Band Potawatomi Nation v. Wagon*, 476 F.3d 818, 823 (10th Cir.2007)), it would still be important to continue to recognize the primacy of ERISA here. The federal law was designed specifically for arrangements providing welfare benefits and everyone involved, from this Court to the fiduciaries and service providers to the participants, can look to the requirements of this law for guidance.

4. The petition filed by the plaintiffs in this case proves that there is no alternative to ERISA since plaintiffs propose no discernible standard of their own to evaluate decisions affecting Millennium's assets or administration. Indeed, the plaintiffs in this and the *Westfall* case are from twenty different states, and are seeking to hold defendants to some unspecified law of those

states. But one of the principal reasons for the enactment of ERISA was the desire to enact a single uniform set of rules to govern benefit plans: as the legislative history provides:

A fiduciary standard embodied in Federal legislation will bring a measure of uniformity in an area where decisions under the same set of facts may differ from state to state . . . .

[I]t is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

*Report of the Committee on Ways and Means on H.R. 12855*, U.S. House of Representatives, 93d Congress, 2d Session (1974), at 3308. *See also* III *Legislative History of the Employee Retirement Income Security Act of 1974*, at 4770-4771 (Floor comments of Senator Williams, one of the chief sponsors of ERISA)(warning of the “possibility of endless litigation [and] multiple and potentially conflicting State laws” in the absence of a single federal standard under ERISA).

Dated: June 30, 2011

Respectfully submitted,

/s/ Katherine S. Kamen

---

KATHERINE S. KAMEN

*Admitted pro hac vice*

eas@groom.com

Edward A. Scallet

*Admitted pro hac vice*

eas@groom.com

Lars C. Golumbic

*Admitted pro hac vice*

lgolumbic@groom.com

HISHAM M. AMIN

*Admitted pro hac vice*

hamin@groom.com

Groom Law Group, Chartered  
1701 Pennsylvania Avenue, N.W.  
Suite 1200  
Washington, D.C. 20006  
Phone: (202) 857-0620

Fax: (202) 659-4503

Counsel for Debtor

**CERTIFICATE OF SERVICE**

I hereby certify that the above-referenced document was served via the Court's Electronic Mailing System on the 30th day of June, 2011 as follows:

John Justin Johnston – jjohnson@whmlaw.net, bwalters@whmlaw.net,  
[juliebasewell@whmlaw.net](mailto:juliebasewell@whmlaw.net)

Fred A. Leibrock - faleibrock@phillipsmurrah.com, knogle@phillipsmurrah.com,  
[ecf@phillipsmurrah.com](mailto:ecf@phillipsmurrah.com)

Eric D. Madden on behalf of Plaintiff Diogenes Holdings, Inc.  
emadden@diamondmccarthy.com, cburrow@diamondmccarthy.com,  
dblake@diamondmccarthy.com, blweis@diamondmccarthy.com

James R. Wyrsh - jimwyrsh@whmlaw.net, bwalters@whmlaw.net,  
[juliebasewell@whmlaw.net](mailto:juliebasewell@whmlaw.net)

Additionally, a true and correct copy of the foregoing was sent to the following parties in this proceeding by first class mail this 28th day of June, 2011.

Anthony L. Vitullo  
Fee Smith Sharp & Vitullo LLP  
Three Galleria Tower  
13155 Noel Road Suite 1000  
Dallas, TX 75240  
(972) 980-3254  
Fax : (972) 934-9200  
Email: [lvitullo@feesmith.com](mailto:lvitullo@feesmith.com)

John L. Malesovas  
The Malesovas Law Firm  
816 Congress Suite 1265  
Austin, TX 78701  
(512) 708-1777  
Fax : 512-708-1779  
Email: john@malesovas.com

Larry E. Kelly  
5400 Bosque Blvd., Ste 301  
Waco, TX 76710  
254-776-5500

David A. Clark  
Beirne Maynard & Parsons, LLP  
1300 Post Oak Blvd, Suite 2500  
Houston, TX 77056

Adria Price  
Price & Associates, LLC  
43 North Kringle Place  
P.O. Box 100  
Santa Claus, IN 47579

Jonathan Cocks  
3205 Walker Drive  
Richardson, TX 75082

Charles H. Barnett, III  
Sara Barnett  
Spragins Barnett & Cobb, PLC  
PO Box 2004  
312 E. Lafayette  
Jackson, TN 38302-2004

Innovus Financial Solutions , LLC  
22 East Bend Lane  
Houston, TX 77007-7027

Robert L. Moore  
Heaton & Moore, PC  
100 N. Main Building  
Suite 3400  
Memphis, TN 38103

John David McDowell  
Harwell Howard Hyne Gabbert & Manner  
315 Deaderick Street, Suite 1800  
Nashville, TN 37238

Dale H. Tuttle  
Glassman Edwards Wade & Wyatt, PC  
26 N. Second Street  
Memphis, TN 38103

Robert Redding  
Redding Steen & Staton, PC  
464 North Parkway, Suite A  
Jackson, TN 38305

Rebecca B. Howald  
Manier & Herod  
One Nashville Place, Suite 2200

150 Fourth Avenue North  
Nashville, TN 37219

Kathleen R. Barrow  
Jackson Lewis, LLP  
1415 Louisiana Street, Suite 3325  
Houston, TX 77002

Craig Brinker  
LaToyia Watkins Pierce  
Henslee Schwartz LLP  
6688 N. Central Expressway  
Suite 850  
Dallas, TX 75206

Jerry D. Kizer, Jr.  
Rainey Kizer Reviere & Bell  
PO Box 1147  
Jackson, TN 38302-1147

Kevin Baltz  
Miller & Martin, LLP  
150 Fourth Ave N.  
1200 One Nashville Place  
Nashville, TN 37219-2433

J. Brandon McWherter  
Gilbert Russell McWherter PLC  
101 North Highland  
Jackson, TN 38301

Travis R. McDonough  
Miller & Martin, LLP  
150 Fourth Ave N.  
1200 One Nashville Place  
Nashville, TN 37219-2433

Alix Coulter  
Harwell Howard Hyne Gabbert & Manner  
315 Deaderick Street, Suite 1800  
Nashville, TN 37238

*s/ Katherine S. Kamen*

---

KATHERINE S. KAMEN